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# In the Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

## No. 635.

In the Matter of
THE HIGBEE COMPANY,
*Debtor.*

BANKRUPTCY No. 36,119.

ROBERT R. YOUNG,
*Petitioner,*

vs.

JOHN P. MURPHY and
GERTRUDE BAKER BRADLEY and ALVA BRADLEY,
Executors of the Estate of Charles L. Bradley,
deceased,
*Respondents.*

## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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## AUTHORITIES CITED.

*Chicot County District v. Bank*, 308 U. S. 371..... 3

*Southern Pacific Co. v. Bogert*, 250 U. S. 483..... 3

*Young v. Higbee Co., et al.*, 324 U. S. 204..... 4

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Respondents have filed two briefs. One deals with the subject generally. The other on behalf of the Bradley Estate comments only on the Ohio Statutes concerned with the probate of estates.

Inasmuch as the lower courts decided the case on grounds other than the Ohio Probate laws, there is no issue here made with respect to those laws. It is true though, that a novel question is presented as to the possible conflict of the Probate laws of a state with United States Bankruptcy Laws.

The following remarks have to do with the brief filed on behalf of both respondents concerning the issues made by the decisions below. Page references are to that brief.

On page 3, respondents admit that they bought from Potts and Boag their shares of Higbee as objecting stockholders:

> "*solely* for the purpose of accomplishing a dismissal of the stockholders' appeal, thus enabling them (respondents) to finance payment of their note, etc. * * *."

And again at page 6, respondents say:

> "the *sole* purpose of the purchase by Bradley and Murphy of the stockholdings of Potts and Boag, and the dismissal of their appeal, was to protect themselves against an attempted seizure by Petitioner Young of Bradley and Murphy's holdings."

These statements admit the chief contention asserted by petitioner that respondents trafficked in the securities and litigation of the bankrupt "*solely* to protect themselves." It is not claimed that the transaction was for the benefit of the Higbee estate. What clearer admission could be had of the abuse of corporate office and the violation of duty in bankruptcy proceedings by officers trusted by the court, than is contained in respondents' brief.

At page 5 respondents refer to a suit brought by Young demanding an accounting for the profits made by Potts and Boag in the sale to Bradley and Murphy complained of. It is to be noted that the action referred to concerned only the profits made by Potts and Boag. At page 9, respondents, in further reference to the same litigation, admit that the claim was only:

> "for what Bradley and Murphy paid to purchase the Potts-Boag stockholdings and the right to dismiss the appeal."

The cause stated in the instant case is entirely different. Petitioner here seeks to hold Bradley and Murphy for what they gained, not what they paid to Potts and Boag. The rights asserted by petitioner in this action are for Bradley and Murphy's profit of more than $3,000,000. The rights asserted in the other action con-

cerned $115,000, the amount Bradley and Murphy paid to Potts and Boag.

The case of *Chicot County District v. Bank,* 308 U. S. 371, referred to by respondents at page 12, requires that in the first action all available matter which might have been presented "to sustain or defeat the rights asserted" be brought forth. That well-known principle is not applicable here because "the rights asserted" in the instant case are not the same as in the former case.

In *Southern Pacific Co. v. Bogert,* 250 U. S. 483, 490, the court dealt with a similar claim that previous litigation between the same parties was *res judicata* to the instant action. The Court said:

> "But in none of these suits was the question here in issue decided. Except in so far as those cases were disposed of on objections to jurisdiction, they decided merely that the foreclosure could not be set aside as fraudulent; that the minority stockholders could not have the reorganization agreement declared fraudulent; and that they could not compel a reduction of the assessment made under it, or enjoin distribution of the stock according to its terms. The minority stockholders sought, when presenting the case in the court of appeals of New York (*MacArdell v. Olcott,* 189 N. Y. 368, 372, 373, 82 N. E. 161), to have declared the trust which was later decreed in this suit; but that court refused to consider the contention, for the reason that this claim to relief was based upon a theory 'widely at variance' with that upon which that action was commenced and tried. Because of such wide divergence the earlier decrees do not operate as *res judicata.* And there is no basis for the claim of estoppel by election; nor any reason why the minority, who failed in the attempt to recover on one theory, because unsupported by the facts, should not be permitted to recover on another for which the facts afford ample basis."

At page 7 respondents claim that they "as owners of all of debtor's old common stock were entitled to all of

debtor's equity." That assertion begs the question to be decided in this case. If respondents' overreaching conduct requires them to account for their gains, then they certainly are not "entitled to all of debtor's equity."

Respondents again, at page 14, refer to "all of the old common stock of debtor," and say that their claim to it was not contested in the Potts-Boag appeal. That is true only in a technical sense because the reorganization awarded nothing specifically for the old common stock. The entire share allotted to respondents for the Higbee securities they had brought from the Ball Foundation was challenged by the Potts and Boag appeal.

Petitioner emphasizes that he is not seeking a "complete modification of the Plan of Reorganization" as asserted by respondents at page 11. He asks only for an equitable accounting for profits derived from inequitable acts of respondents, committed after the approval of the compromise plan.

At pages 7-11, respondents challenge the jurisdiction of the Bankruptcy court. This same defense was ruled groundless by the Supreme Court in *Young v. Higbee Co., et al.*, 324 U. S. 204 (R. 12) when it said:

> "The District Court still has jurisdiction to exercise its powers under the Act, both because of its express reservation and because of the provisions of Section 222."

Respectfully submitted,

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